

Atty. Dkt. No. 035451-0166 (3704.Palm)

REMARKS

Applicant respectfully requests reconsideration of the present application in view the reasons that follow.

Claims 1-2, 5-20, 22, and 24-29 are currently pending in the application.

A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate status identifier for each claim.

Claim Rejections – 35 U.S.C. § 103(a)

In section 3 of the Office Action, claims 1-2, 5-20, 22, and 24-29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mitsugi (U.S. Patent No. 5,353,023) in view of Murakami (U.S. Published Patent Application No. 2003/0135427). Applicants respectfully traverse these rejections. Applicants submit that Murakami is unavailable as a prior art reference under 35 U.S.C. § 103(a) against claims 1-2, 5-20, 22, and 24-29 of the present application.

The present application was filed on November 1, 2001. Accordingly, the present application has an effective filing date of November 1, 2001. Murakami has a publication date of July 17, 2003, and a filing date of December 26, 2002. Murakami claims priority to Application No. PCT/JP01/01374 with an international filing date of April 24, 2001, and also claims priority to Japanese Patent Application 2000-191769 with a filing date of June 26, 2000. Applicants submit that Murakami is not entitled to the June 26, 2000 priority date of Patent Application 2000-191769 as a prior art reference for purposes of 35 U.S.C 103(a)/102(e). See In re Hilmer, 149 U.S.P.Q. 480 (CCPA 1966); Manual of Patent Examining Procedure § 706.02 (f)(1). Applicants also submit that Murakami is not entitled to the April 24, 2001 international filing date of Application No. PCT/JP01/01374 as a prior art reference for purposes of 35 U.S.C

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103(a)/102(e) because this application was not published under PCT article 21(2) in English.¹ See Manual of Patent Examining Procedure § 706.02 (f)(1). As such, the earliest date Murakami is entitled to as a prior art reference for purposes of 35 U.S.C 103(a)/102(e) is the filing date of December 26, 2002, which is later than the effective filing date of November 1, 2001 of the present application.

Accordingly, Applicants submit that Murakami is unavailable as a prior art reference under 35 U.S.C. § 103(a)/102(e) against claims 1-2, 5-20, 22, and 24-29 of the present application. As the rejection of each of claims 1-2, 5-20, 22, and 24-29 is based in part on Murakami, which is unavailable as a prior art reference, Applicants request that the rejection of claims 1-2, 5-20, 22, and 24-29 under 35 U.S.C. § 103(a)/102(e) be withdrawn.

Conclusion

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers

¹ The WIPO publication of Application No. PCT/JP01/01374 (WO 02/01440 A1) is in Japanese. Applicants also note that WO 02/01440 A1 has a publication date of March 1, 2002, which is later than the effective filing date of November 1, 2001 of the present application for purposes of 35 U.S.C. § 103(a)/102(a) or 35 U.S.C. § 103(a)/102(b).

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submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

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